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| COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576 | | | EXAMINER | |
| | | | HAND, MELANIE JO | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,692

Applicant(s)

NEUGEBAUER ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29, 31, 33, 35, 40, 44, 53-55, 59, 65, 67 and 69-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29, 31, 33, 35, 40, 44, 53-55, 59, 65, 67, 69-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. The objection to the specification has been withdrawn in light of the amendment to the claims.
2. The objection to claim 32 is moot in view of the amendment to the claims.
3. The rejections of claims 40, 64 and 67 under 35 U.S.C. 112, first paragraph and claims 29, 35, 40, 59, 61 and 67 under 35 U.S.C. 35 U.S.C. 112, second paragraph are moot in view of the amendment to the claims.
4. Applicant's arguments with respect to claim 59 under 35 U.S.C. 112, first paragraph have been fully considered but they are not persuasive. There is no explicit correlation between materials used and/or structural features and any peel force of any magnitude in the specification. The examiner disagrees that referring one of ordinary skill in the art to several unrelated foreign prior art patents would enable that person to make or use the instantly claimed invention in any way. Thus the rejection is maintained herein.
5. Though the amendment to the claims eliminates phrases beginning with "preferably" in claim 53 which prompted the original rejection of that claim under 35 U.S.C. 112, second paragraph, claim 53 still includes the phrase "optionally substantially in the longitudinal direction of extent", which presents the same issues as "preferably", in that it is not entirely clear what applicant intends to include in the scope of the claim. Thus a new rejection of claim 53 under 35 U.S.C. 112, second paragraph, is made herein.
6. Applicant's arguments with respect to the rejections of claims 29, 31, 33, 35, 40, 44, 53, 54, 55, 59, 65, 67, 68 and 69 under 35 U.S.C. 102 and 35 U.S.C. 103 have been considered but are not persuasive. The adhesive area having flocked fibers referred to by the applicant and

disclosed by Tanzer is a feature of a particular embodiment which was not cited against the claimed pop-off securing means. Further, it is the examiner's position that an adhesive area flocked with fibers would have an enhanced "pop-off" capability when compared to a simple adhesive layer such as area 78 cited against the claimed pop-off securement means because these fibers diminish the peeling force necessary to disengage the layers once engaged and would even obstruct the ability of the engaging member in the Tanzer article to adhere to the adhesive area 78 cited against the claims, again further contributing to a "pop-off" effect.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 59 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Subject matter critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The disclosure merely alludes to fastener tapes in other foreign patents, which is not sufficient to enable any of the recited ranges for separation force for the adhesive adhering to the recited diaper.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 53 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention. Regarding claim 53, the phrase "optionally substantially" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 29, 31-33, 44, 53-55, 61, 64 and 66-77 are rejected under 35 U.S.C. 102(a) as being anticipated by Tanzer et al (U.S. Patent Application Publication No. 2003/0009144)

With respect to **claim 70**: Tanzer discloses a fastening tape for a hygiene item comprising: (a) a fastening area for permanent attachment to the hygiene item; (b) a closing area for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener; (c) a plurality of spot-shaped carriers within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, wherein a

selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier; (d) a fastening carrier fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area.

With respect to **claim 71**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying a component, i.e. hooks, of a two-component mechanical fastening system (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶¶0068) The carrier area has a cohesive open adhesive area defined by adhesive areas 78 between the spot-shaped carriers 64. (Fig. 5)

With respect to **claim 72**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area, namely fastener islands 64, having a shear-off securing component of a two-component mechanical fastening system 64,78, said second area, the collective area defined by adhesive areas 78, having a pop-off securing fastener; (c) a plurality

of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers configured as edge spots, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶0068) The plurality of spot-shaped carriers 64 comprises at least one central spot having a spot edge situated within the carrier area and at least one edge spot having a spot edge situated at a tape edge. (Fig. 5)

With respect to **claim 73**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area, namely fastener islands 64, having a shear-off securing component of a two-component mechanical fastening system 64,78, said second area, the collective area defined by adhesive areas 78, having a pop-off securing fastener; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers configured as edge spots, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped

carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶0068) The plurality of spot-shaped carriers 64 comprises plurality of circular spots and at least one semicircular edge spot necessarily having a chord running through the mid-point of the at least one semi-circular edge spot along a boundary of the carrier area inasmuch as a chord is simply a line that connects one point on the perimeter of the circle with another on the same perimeter.

With respect to **claim 74**: Tanzer discloses a method for closing a diaper comprising the steps of: (a) providing a diaper 20 having a wing, a landing zone on the surface 36 of the backsheet, and a fastening tape 60, the landing zone comprising a surface area of a textile back sheet [0075], the fastening tape comprising a fastening area for permanent attachment to the diaper, a closing area for simultaneous detachable joining to a surface of the diaper, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener, a plurality of spot-shaped carriers 64 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier, a fastening carrier fastened to said spot-shaped carriers and a bending line running through the carrier area; and (b) closing the diaper by establishing a connection between the closing area of the fastening tape 60 on the diaper wing and the landing zone. (¶0050)

With respect to **claim 75**: Tanzer discloses a method for producing a diaper-fastening tape comprising the steps of: (a) first applying spots 64 to a plurality of diaper-fastening tapes that are adjacent in the machine direction; and (b) then separating the tapes to yield their final shape. (¶¶0097-0099) Each fastening tape comprises a fastening area for permanent attachment to the diaper, a closing area for simultaneous detachable joining to a surface of the diaper, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener, a plurality of spot-shaped carriers 64 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier, a fastening carrier fastened to said spot-shaped carriers and a bending line running through the carrier area.

With respect to **claim 76**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying a component, i.e. hooks, of a two-component mechanical fastening system (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶0068) The closing area

initially at least partially comprises hooks on spot-shaped carriers 64 and an otherwise open adhesive area defined by adhesive areas 78 between the spot-shaped carriers 64. (Fig. 5)

With respect to **claim 77**: Tanzer discloses a fastening tape for a hygiene item comprising: (a) a fastening area for permanent attachment to the hygiene item; (b) a closing area for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener; (c) a plurality of spot-shaped carriers within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying a hook component of a two-component mechanical fastening system; (d) a fastening carrier fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area. The plurality of spot-shaped carriers comprises a plurality of edge spots with a sharp-edged edge section. (Fig. 5)

With respect to **claim 29**: An adhesive layer disposed on surface 74 of fastener carrier 72 disclosed by Tanzer runs continuously within the entire carrier area underneath the spot-shaped intermediate carrier 64 so that said layer defines an open adhesive layer (i.e. lies open) between the spots.

With respect to **claim 31**: As can be seen in Fig. 4, the spots 64 disclosed by Tanzer have their own main direction of extent parallel to the longitudinal direction of the fastener 60.

With respect to **claim 33**: The bending lines disclosed by Tanzer are "well-defined lines of flexibility" that are free of fastener islands 64. Thus, as can be seen in Fig. 5, there is at least one bending line that lies obliquely or normally to the direction of longitudinal extent of the fastener tape.

With respect to **claim 35**: Tanzer discloses that "well-defined lines of flexibility", i.e. bending lines run exclusively in one direction or at least essentially in one direction through the carrier area inasmuch as the lines are defined by areas free of fastener islands which, as can be seen in Fig. 5 may run in at least one direction, which meets the limitation "at least essentially in one direction."

With respect to **claim 40**: A plurality of spot-shaped carriers 64 disclosed by Tanzer comprises a plurality of spots having a varying edge in the machine direction, and arranged in levels extending in the direction of the longitudinal extent of the fastening tape over the effective width of the carrier area, each level being separated from an adjoining level by a distance in the machine direction, at least one spot being provided at each level running in the machine direction over the effective width of the carrier area. (Fig. 5)

With respect to **claim 44**: An intermediate carrier, the island material, for the closing system component 64 is formed by a separation in a first direction and by spaced-apart weakening via bending lines therebetween in a second direction as strip-shaped spots inasmuch as Tanzer discloses that the spots can be rectangular and may have lines free of fastener island 64.

(¶¶0019,0064)

With respect to **claim 53**: Tanzer discloses a strip material having a longitudinal direction of extent that can be divided by separating across the longitudinal direction of extent to form individual usages, fastener tapes 60, meeting all of the structural and functional limitations of claim 70. (¶0099)

With respect to **claim 54**: Tanzer discloses a roll of strip material meeting all of the limitations of claims 53 and 70 for reasons stated *supra* in the rejections of those claims. (¶0096)

With respect to **claim 55**: Tanzer discloses a diaper 20 having a fastening tape 60 meeting all of the structural and functional limitations of claim 70. (Fig. 8)

With respect to **claim 67**: The plurality of strip-shaped spots 64 disclosed by Tanzer comprises at least two strips 64 along the first direction wherein the strips are rectangular and thus lie parallel to the first direction and substantially parallel to one another (¶0061), whereas in the second direction along the profile of the strips, the strips are provided with an edge variation in the form of a change in elevation between the island edge and the top of flexible layer 78. (Fig. 6) Thus the strips disclosed by Tanzer comprise weakenings which are spaced apart from one another with a constriction of the strips comprising a tapering in the profile (i.e. the change in elevation) so that defined bending lines are obtained in the first direction along the dividing lines of the individual strip-shaped spots and, approximately perpendicular thereto, are obtained weaker but nevertheless perceptible further bending lines.

With respect to **claim 69**: The fastening tape 60 disclosed by Tanzer meets all of the structural

and functional limitations of claim 77, wherein the hook component on the edge section comprises separated hooks on the edge section of the islands/carriers 64. (Fig. 6)

13. Claims 29, 31-33, 35, 40, 44, 53-55, 61, 64 and 66-77 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanzer et al ('144).

With respect to **claim 70**: Tanzer discloses a fastening tape for a hygiene item comprising: (a) a fastening area for permanent attachment to the hygiene item; (b) a closing area for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener; (c) a plurality of spot-shaped carriers within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier; (d) a fastening carrier fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area.

With respect to **claim 71**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers,

each spot-shaped carrier carrying a component, i.e. hooks, of a two-component mechanical fastening system (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (§10068) The carrier area has a cohesive open adhesive area defined by adhesive areas 78 between the spot-shaped carriers 64. (Fig. 5)

With respect to **claim 72**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area, namely fastener islands 64, having a shear-off securing component of a two-component mechanical fastening system 64,78, said second area, the collective area defined by adhesive areas 78, having a pop-off securing fastener; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers configured as edge spots, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (§10068) The plurality of spot-shaped carriers 64 comprises at least one central spot having a spot edge situated within the carrier area and at

least one edge spot having a spot edge situated at a tape edge. (Fig. 5)

With respect to **claim 73**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area, namely fastener islands 64, having a shear-off securing component of a two-component mechanical fastening system 64,78, said second area, the collective area defined by adhesive areas 78, having a pop-off securing fastener; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers configured as edge spots, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶0068) The plurality of spot-shaped carriers 64 comprises plurality of circular spots and at least one semicircular edge spot necessarily having a chord running through the mid-point of the at least one semi-circular edge spot along a boundary of the carrier area inasmuch as a chord is simply a line that connects one point on the perimeter of the circle with another on the same perimeter.

With respect to **claim 74**: Tanzer discloses a method for closing a diaper comprising the steps of: (a) providing a diaper 20 having a wing, a landing zone on the surface 36 of the backsheet,

and a fastening tape 60, the landing zone comprising a surface area of a textile back sheet [0075], the fastening tape comprising a fastening area for permanent attachment to the diaper, a closing area for simultaneous detachable joining to a surface of the diaper, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener, a plurality of spot-shaped carriers 64 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier, a fastening carrier fastened to said spot-shaped carriers and a bending line running through the carrier area; and (b) closing the diaper by establishing a connection between the closing area of the fastening tape 60 on the diaper wing and the landing zone. (¶0050)

With respect to **claim 75**: Tanzer discloses a method for producing a diaper-fastening tape comprising the steps of: (a) first applying spots 64 to a plurality of diaper-fastening tapes that are adjacent in the machine direction; and (b) then separating the tapes to yield their final shape. (¶¶0097-0099) Each fastening tape comprises a fastening area for permanent attachment to the diaper, a closing area for simultaneous detachable joining to a surface of the diaper, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener, a plurality of spot-shaped carriers 64 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying the shear-off securing component, i.e. hooks, wherein a selected set of said plurality of spot-shaped carriers

comprises a plurality of edge carriers, each edge carrier forming a respective portion of a border of the carrier area along an edge section of the edge carrier, a fastening carrier fastened to said spot-shaped carriers and a bending line running through the carrier area.

With respect to **claim 76**: Tanzer discloses a fastening tape 60 for a hygiene item comprising the following: (a) a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item; (b) a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item; (c) a plurality of spot-shaped carriers in the collective form of spots 64,66,68,80 within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying a component, i.e. hooks, of a two-component mechanical fastening system (Fig. 5); (d) a fastening carrier in the form of first flexible layer 72 fastened to said spot-shaped carriers; and (e) a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (¶¶0068) The closing area initially at least partially comprises hooks on spot-shaped carriers 64 and an otherwise open adhesive area defined by adhesive areas 78 between the spot-shaped carriers 64. (Fig. 5)

With respect to **claim 77**: Tanzer discloses a fastening tape for a hygiene item comprising: (a) a fastening area for permanent attachment to the hygiene item; (b) a closing area for simultaneous detachable joining to a surface of the hygiene item, said closing area comprising first and second areas, said first area having a shear-off securing component of a two-component mechanical fastening system and said second area having a pop-off securing fastener; (c) a plurality of spot-shaped carriers within a carrier area defined by said spot-shaped carriers, each spot-shaped carrier carrying a hook component of a two-component mechanical fastening system; (d) a fastening carrier fastened to said spot-shaped carriers; and (e) a

bending line running through the carrier area. The plurality of spot-shaped carriers comprises a plurality of edge spots with a sharp-edged edge section. (Fig. 5)

With respect to **claim 29**: An adhesive layer disposed on surface 74 of fastener carrier 72 disclosed by Tanzer runs continuously within the entire carrier area underneath the spot-shaped intermediate carrier 64 so that said layer defines an open adhesive layer (i.e. lies open) between the spots.

With respect to **claim 31**: As can be seen in Fig. 4, the spots 64 disclosed by Tanzer have their own main direction of extent parallel to the longitudinal direction of the fastener 60.

With respect to **claim 33**: The bending lines disclosed by Tanzer are "well-defined lines of flexibility" that are free of fastener islands 64. Thus, as can be seen in Fig. 5, there is at least one bending line that lies obliquely or normally to the direction of longitudinal extent of the fastener tape.

With respect to **claim 35**: Tanzer discloses that "well-defined lines of flexibility", i.e. bending lines run exclusively in one direction or at least essentially in one direction through the carrier area inasmuch as the lines are defined by areas free of fastener islands which, as can be seen in Fig. 5 may run in at least one direction, which meets the limitation "at least essentially in one direction."

With respect to **claim 40**: A plurality of spot-shaped carriers 64 disclosed by Tanzer comprises a plurality of spots having a varying edge in the machine direction, and arranged in levels extending in the direction of the longitudinal extent of the fastening tape over the effective width of the carrier area, each level being separated from an adjoining level by a distance in the machine direction, at least one spot being provided at each level running in the machine direction over the effective width of the carrier area. (Fig. 5)

With respect to **claim 44**: An intermediate carrier, the island material, for the closing system component 64 is formed by a separation in a first direction and by spaced-apart weakening via bending lines therebetween in a second direction as strip-shaped spots inasmuch as Tanzer discloses that the spots can be rectangular and may have lines free of fastener island 64.

(¶¶0019,0064)

With respect to **claim 53**: Tanzer discloses a strip material having a longitudinal direction of extent that can be divided by separating across the longitudinal direction of extent to form individual usages, fastener tapes 60, meeting all of the structural and functional limitations of claim 70. (¶0099)

With respect to **claim 54**: Tanzer discloses a roll of strip material meeting all of the limitations of claims 53 and 70 for reasons stated *supra* in the rejections of those claims. (¶0096)

With respect to **claim 55**: Tanzer discloses a diaper 20 having a fastening tape 60 meeting all of the structural and functional limitations of claim 70. (Fig. 8)

With respect to **claim 67**: The plurality of strip-shaped spots 64 disclosed by Tanzer comprises at least two strips 64 along the first direction wherein the strips are rectangular and thus lie parallel to the first direction and substantially parallel to one another (§10061), whereas in the second direction along the profile of the strips, the strips are provided with an edge variation in the form of a change in elevation between the island edge and the top of flexible layer 78. (Fig. 6) Thus the strips disclosed by Tanzer comprise weakenings which are spaced apart from one another with a constriction of the strips comprising a tapering in the profile (i.e. the change in elevation) so that defined bending lines are obtained in the first direction along the dividing lines of the individual strip-shaped spots and, approximately perpendicular thereto, are obtained weaker but nevertheless perceptible further bending lines.

With respect to **claim 69**: The fastening tape 60 disclosed by Tanzer meets all of the structural and functional limitations of claim 77, wherein the hook component on the edge section comprises separated hooks on the edge section of the islands/carriers 64. (Fig. 6)

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al ('144).

With respect to **claim 65**: Tanzer discloses that there are rows of islands that extend substantially the length of the tape 60, including edge spots that are applied. Thus, though Tanzer does not explicitly disclose that, when separating the tapes, edge spots extending over a bordering edge are severed, Tanzer fairly suggests spots that are located on the edge of a tape fastener and thus suggests a method wherein when separating the individual fastening tapes, edge spots extending over a bordering edge are severed by virtue of disclosing the step of cutting a continuous roll of fastener material, which would inevitably result in severing of said edge spots. It would therefore be obvious to one of ordinary skill in the art to modify the method of Tanzer such that, when separating the individual fastening tapes, edge spots extending over a bordering edge are severed, so that when the tapes are in use they do not inadvertently or prematurely attached to undesirable pos of the diaper.

17. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al ('144) in view of Cinelli et al (U.S. Patent Application Publication No. 2003/0212416).

With respect to **claim 59**: Examiner interprets separation force herein as referring to peel force. Tanzer does not disclose that the pop-off securing means comprising adhesive of the free adhesive layer is selected in the closing area such that the adhesive adheres to a back sheet of the diaper with a separation force of more than 0.05 N/cm², preferably more than 0.1 N/cm², especially preferably more than 0.15 N/cm². Cinelli discloses a hydrogel adhesive having a peel force of 0.1-5 N/cm², which overlaps the claimed range. Cinelli discloses that such adhesive has enhanced cohesiveness which would ensure the fastener tape remains securely fastened during movement of the wearer. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Tanzer by using the adhesive of Cinelli in the pop-off securing means of the closing area to provide enhanced cohesiveness and securement during wear. ('416, ¶¶0012,0110)

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761